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SARAH SAYEED MAJANGAH & ANOR v. LEMBAGA GETAH MALAYSIA & ANOR

COURT OF APPEAL, PUTRAJAYA
LIM YEE LAN JCA
HAMID SULTAN ABU BACKER JCA
B NALLINI PATHMANATHAN JCA
[CIVIL APPEAL NO: W-02(NCVC)(W)-1991-11-2014]
14 JANUARY 2016

C ***CONTRACT:*** *Specific performance – Refusal to grant – Appeal against – Draft lease agreement – Whether an offer simpliciter could be revoked by a counter offer – Whether terms of agreement negotiated fit for execution – Whether parties reached consensus ad idem – Whether contract prima facie concluded – Whether specific performance of lease agreement should be granted*

D ***CONTRACT:*** *Formation – Subject to contract – Draft lease agreement – Whether an offer simpliciter could be revoked by a counter offer – Whether terms of agreement negotiated fit for execution – Whether parties reached consensus ad idem – Whether contract prima facie concluded – Unilateral act of one party seeking to withdraw from agreement – Whether amounted to breach of obligations*

E The first defendant/first respondent ('first defendant') was the registered proprietor of two properties, Lots 261 and 260. Lot 261 had been leased to the first plaintiff/first appellant ('the first plaintiff'). Before the termination of the current lease, the first plaintiff gave a proposal to purchase the said Lot 261. After various negotiations, the first defendant offered the lease to Lot 261 to the first plaintiff for a period of 30 years. The first defendant then
F forwarded the draft lease agreement to the first plaintiff. Subsequently, there was an exchange of correspondence between the parties to deal with an issue relating to acquisition of the property by state authorities. During that said period, the first defendant had also offered the lease to Lot 260 to the first plaintiff. However, the first plaintiff took the liberty to waive the
G non-essential terms for the conclusion of the contract and sent a letter of acceptance of the said lease agreement. The first defendant argued that the negotiations in respect of the acquisition and the leasing of Lot 260 as well as the entering of the tenancy agreement for a period of one year between the first plaintiff and the first defendant to allow them to stay in Lot 261 after
H the expiry of the current lease, cumulatively tantamount to a counter offer which had revoked the offer to lease Lot 261. The High Court found that the defendants never agreed to the said 30 year lease and held that there was no 30 year lease agreement finalised between the parties. The plaintiffs thus appealed against the High Court Judge's refusal to grant specific performance
I of the lease agreement against the first defendant. The issue that arose was whether there was a concluded agreement for the grant of a 30 year lease to the plaintiffs.

Held (allowing appeal with costs)
Per Hamid Sultan Abu Backer JCA delivering the judgment of the court:

(1) The law leans in favour of upholding bargains between the parties and not in striking them down. When it relates to sale and purchase agreements, lease agreements or tenancy agreements, where the terms and conditions relating to essential terms are standard in nature, the court will not permit a party who had subscribed to the terms to evade to conclude the agreement for circuitous reasons. (para 6)

(2) The draft lease agreement was not an offer *simpliciter* which could be revoked by a counter offer. The parties herein had moved far away from the 'offer' *simpliciter* and had negotiated the terms of the agreement. They had moved to an advanced stage fit for execution. There was in law and in fact a valid and enforceable lease agreement for Lot 261 and the contract *prima facie* was concluded. The parties had reached *consensus ad idem*. (paras 13 & 16)

(3) In view of the existence of a valid and enforceable lease agreement and the acceptance thereof, the unilateral act of the first defendant in seeking to withdraw from the lease agreement amounted to a breach of its obligations. This was a fit and proper case to order specific performance of the lease agreement. (para 16)

Bahasa Malaysia *Headnotes*

Defendan pertama/responden pertama ('defendan pertama') adalah pemilik berdaftar dua hartanah, Lot 261 dan 260. Lot 261 telah dipajak kepada plaintif pertama/perayu pertama ('plaintif pertama'). Sebelum penamatan pajakan semasa, plaintif pertama telah memberi cadangan untuk membeli Lot 261 tersebut. Selepas pelbagai rundingan, defendan pertama telah menawarkan pajakan untuk Lot 261 tersebut kepada plaintif pertama bagi tempoh 30 tahun. Defendan pertama telah menghantar kepada plaintif pertama draf perjanjian pajakan. Kemudiannya, terdapat pertukaran surat-menyurat antara pihak-pihak untuk menangani isu berkaitan dengan perolehan hartanah oleh pihak kuasa negeri. Dalam tempoh tersebut, defendan pertama juga telah menawarkan pajakan untuk Lot 260 kepada plaintif pertama. Bagaimanapun, plaintif pertama mengambil peluang untuk ketepikan syarat-syarat tidak perlu bagi memuktamadkan kontrak dan menghantar surat penerimaan perjanjian pajakan tersebut. Defendan pertama berhujah bahawa perundingan pengambilalihan dan tawaran pajakan untuk Lot 260 serta perjanjian penyewaan satu tahun yang dibuat oleh plaintif pertama dan defendan pertama untuk membenarkan plaintif-plaintif tinggal di Lot 261 selepas tamat tempoh pajakan semasa, secara kumulatif sama seperti tawaran balas yang membatalkan tawaran pajakan untuk Lot 261. Mahkamah Tinggi mendapati bahawa defendan-defendan tidak pernah bersetuju dengan pajakan 30 tahun tersebut dan memutuskan bahawa tiada

perjanjian pajakan 30 tahun dimuktamadkan antara pihak-pihak. Plaintif-plaintif dengan itu merayu terhadap keengganan Hakim Mahkamah Tinggi untuk memberikan pelaksanaan spesifik perjanjian pajakan terhadap defendan pertama. Isu yang dibangkitkan adalah sama ada terdapat perjanjian pajakan 30 tahun kepada plaintif-plaintif yang telah dimuktamadkan.

Diputuskan (membenarkan rayuan dengan kos)
Oleh Hamid Sultan Abu Backer HMR menyampaikan penghakiman mahkamah:

(1) Undang-undang lebih cenderung untuk mempertahankan perjanjian antara pihak-pihak dan tidak membatalkannya. Apabila ia berkaitan dengan perjanjian jual beli, perjanjian pajakan atau perjanjian sewaan, di mana terma-terma dan syarat-syarat berhubungan dengan terma-terma penting adalah bersifat standard, mahkamah tidak akan membenarkan pihak yang menerima terma-terma itu mengelak daripada memuktamadkan perjanjian untuk alasan-alasan yang berpusing-pusing.

(2) Draf perjanjian pajakan bukanlah satu tawaran *simpliciter* yang boleh dibatalkan oleh suatu tawaran balas. Pihak-pihak di sini telah bergerak jauh daripada 'tawaran' *simpliciter* dan telah pun berunding syarat-syarat perjanjian. Mereka telah mara ke peringkat selanjutnya yang sesuai untuk pelaksanaan. Dari segi undang-undang dan fakta, terdapat perjanjian pajakan yang sah dan boleh dikuatkuasakan untuk Lot 261 dan satu kontrak *prima facie* telah pun dimuktamadkan. Pihak-pihak telah mencapai *consensus ad idem*.

(3) Memandangkan terdapat kewujudan perjanjian pajakan yang sah dan boleh dikuatkuasakan, serta penerimaannya, tindakan unilateral defendan pertama dalam usahanya untuk menarik diri daripada perjanjian pajakan terjumlah kepada pelanggaran tanggungjawabnya. Ini adalah satu kes yang layak dan sesuai untuk memerintahkan pelaksanaan spesifik perjanjian pajakan.

Case(s) referred to:
Charles Grenier Sdn Bhd v. Lau Wing Hong [1997] 1 CLJ 625 FC ***(refd)***
Deutsche Bank (Malaysia) Bhd v. MBf Holdings Bhd & Anor [2015] 8 CLJ 1068 FC ***(refd)***
Hillas & Co Ltd v. Arcos Ltd [1932] All ER Rep 494 ***(refd)***
Pinsia Development Sdn Bhd & Ors v. Hj Abdul Hadi Ahmad & Ors [2005] 1 CLJ 416 CA ***(refd)***
Rojasara Ramjibhai Dahyabhai v. Jani Narottamdas Lallubhai [1986] 3 SCC 300 ***(refd)***
Sejati Education Sdn Bhd v. S3M Development (Sabah) Sdn Bhd (S-02-1282-08/2014) (Unreported) ***(refd)***

For the appellants - Gopal Sri Ram (RK Sharma Amrit Pal Singh, CK Lim, Adam Alexius Kiob & David Yii with him); M/s Vicknaraj, RD Ratnam, Rajesh Kumar & Assocs
For the respondents - Nad Segaram (Soo Siew Mei with him); M/s Shearn Delamore & Co

[Editor's note: For the High Court judgment, please see Sarah Sayeed Majangah & Satu Lagi lwn. Lembaga Getah Malaysia & Satu Lagi [2014] 1 LNS 1697 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Hamid Sultan Abu Backer JCA:

[1] The appellants'/plaintiffs' appeal against the refusal of the learned High Court Judge to grant specific performance of a lease agreement against the first respondent/first defendant came up for hearing on 28 October 2015, and upon hearing the appeal we allowed the same.

[2] My learned sisters Lim Yee Lan JCA and Nallini Pathmanathan JCA have read this judgment and approved the same. This is our judgment.

[3] The memorandum of appeal reads as follows:

1. The Learned High Court Judge erred in law and in fact in failing to consider that a 30 year lease agreement of Lot 261 had been concluded despite overwhelming evidence demonstrating the same.

2. The Learned High Court Judge erred in law and in fact in failing to take into consideration or adequately consider that there was no evidence that the Appellants had been informed that the 30 years lease of Lot 261 was subject to the approval of the 1st Respondent's Board of Directors and further the approval of the Ministry of Finance ("the Approvals") until after all the terms in the 30 years lease agreement of Lot 261 had been concluded and finalised.

3. The Learned High Court Judge erred in law and in fact in failing to direct herself to take into account the evidence of cross-examination on DW-4, Rosalind Josephine Lim Poh Choo, the Respondents' solicitor who admitted that there was no such clause with regard to the Approvals in the 30 years lease agreement of Lot 261 until all terms of the 30 years lease agreement were concluded and finalised.

4. The Learned High Court Judge erred in law and in fact in finding that there was no contract with regard to the 30 years lease of Lot 261 as there was no acceptance by the Respondents despite evidence showing that there were numerous negotiations between the Appellants and the Respondents that led to the drawing up of the draft lease agreement of Lot 261 until the finalisation and conclusion of the 30 years lease agreement of Lot 261.

5. The Learned High Court Judge erred in law and in fact in failing to consider or adequately consider that there was an open contract as all salient terms of the 30 years lease agreement of Lot 261 had been agreed upon of which are as follows:

    a) The parties to the lease agreement are Lembaga Getah Malaysia, the 1st Respondent and Sayfol International Education Group Berhad, the 2nd Appellant;

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b) The property of the 30 years lease agreement is Lot 261 which consists of Geran 13120, Lot No. 858, Geran 13119, Lot No. 859 and Geran 13118, Lot No. 860 at Mukim Ampang, Federal Territory of Kuala Lumpur and has the address of No. 261, Jalan Ampang, 50450 Kuala Lumpur;

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c) The rental amount of the property was stipulated in schedule B of the 30 years lease agreement of Lot 261; and

d) The tenure of the lease Agreement is 30 years which can also be found at schedule B of the 30 years lease agreement of Lot 261.

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6. The Learned High Court Judge erred in law and in fact in finding that evidence that the Respondents had agreed to enter into a 30 years lease of Lot 261 were only derived from the Appellants' first witness, PW-1, Datuk Seri Panglima Dr Haji Ghulam M Sayeed when it was clear that the particulars of the tenure of the lease and the rental amount was provided by the 1st Respondent to their

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solicitors, Messrs Mazlan & Associates to be incorporated in the draft 30 years lease agreement of Lot 261 as Schedule B in which subsequently all terms of the 30 years lease agreement of Lot 261 was finalised and concluded and only pending formal execution between both parties.

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7. The Learned High Court Judge erred in law and in fact in failing to take into consideration the evidence of PW-1, Datuk Seri Panglima Dr Haji Ghulam M Sayeed and the documentary evidence that a 30 years lease agreement had been concluded between both parties.

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8. The Learned High Court Judge erred in law and in fact in failing to consider or adequately consider that there was no reply nor rebuttal by the Respondents to the Appellants letter dated 23.11.2011 when the 1st Appellant through PW-1, Datuk Seri Panglima Dr Haji Ghulam M Sayeed had reiterated and confirmed with the 1st Respondent about the terms of the 30 years lease of

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Lot 261.

9. The Learned High Court Judge erred in law and in fact in finding that the preparations made by the Appellants such as the working papers, the letters in support and the incorporation of the 2nd Appellant was done unilaterally when it was clear that the same was fundamental steps taken by the Appellants in procuring the 30 years

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lease of Lot 261 from the 1st Respondent which led to the draft 30 years lease agreement of Lot 261 being drawn up.

10. The Learned High Court Judge erred in law and in fact in failing to consider or adequately consider that other than the oral evidence of DW-5, YB Dato' Wira Hj Ahmad bin Hamzah and DW-7, Datuk

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Dr Salmiah binti Ahmad, which was rebutted, there was no evidence to support the Respondents' contention that the Appellants were notified and aware that the First Respondent's Board of Directors did not approve the 30 years lease of Lot 261.

11. The Learned High Court Judge erred in law and in fact in concluding that there was no element of acceptance nor consent from the Respondents and in finding that there was no absolute or conclusive and unqualified acceptance from the Respondents pertaining to the 30 years lease of Lot 261 despite evidence showing that both parties had already finalised all of the terms of the 30 years lease agreement Lot 261 on 4.4.2014 and was only pending formal execution.

12. The Learned High Court Judge erred in law and in fact in finding that the lease for a period of 30 years pertaining to Lot 261 was a mere suggestion and further finding that the Appellants had insisted for the 1st Respondent to enter into the 30 years lease agreement despite evidence showing that the Respondents themselves had appointed solicitors to finalise all of the terms of the 30 years lease agreement of Lot 261.

13. The Learned High Court Judge erred in law and in fact in finding that there was no *consensus ad idem* from both parties regarding the important and fundamental terms of the lease of Lot 261 when all of the salient terms were already agreed upon between the parties during the meeting held on 13.9.2011 which was further reiterated and confirmed in the 1st Appellant's letter dated 23.11.2011. The said letter was never replied nor challenged or objected to by the Respondents.

14. The Learned High Court Judge erred in law and in fact in admitting, taking into account and relying on the highly questionable extract of the minutes of the 1st Respondent's Board of Directors meeting held on 8.3.2011 ("the 8.3.2011 meeting") whereby the maker of the minutes was not called upon to give evidence during trial.

15. The Learned High Court Judge erred in law and in fact in making a finding based on the highly questionable extract of the minutes of the 8.3.2011 meeting that the Board of the 1st Respondent had rejected the 30 years lease of Lot 261 as early as 8.3.2011 of which was never conveyed to the Appellants.

16. The Learned High Court Judge erred in law and in fact in failing to find that the 8.3.2011 meeting was an internal meeting and the Appellants were never part of the meeting and further the Appellants were led on by the Respondents to further negotiate and finalise the terms of the 30 years lease agreement of Lot 261.

17. The Learned High Court Judge erred in law and in fact in failing to consider or adequately consider the oral evidence of DW-1, Basri bin Hamzah, DW-2, Edward Anthony Lajinga, DW-4, Rosalind Josephine Lim Poh Choo, DW-5, YB Dato' Wira Hj Ahmad bin Hamzah and DW-7, Datuk Dr Salmiah binti Ahmad that the term for the period of the lease agreement pertaining to Lot 261 was for the period of 30 years.

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18. The Learned High Court Judge erred in law and in fact in finding that the offer to lease Lot 260 by the 1st Respondent to the Appellants was a counter offer which had rendered the offer to lease Lot 261 no longer effective.

19. The Learned High Court Judge erred in law and in fact in failing to find that the 1st Respondent's offer to lease Lot 260 was not a counter offer as it was a separate and isolated offer by the 1st Respondent after conclusion of all terms and pending formalisation only.

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Preliminaries And Jurisprudence

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[4] At the start of the hearing, learned counsel for the appellants advised that there was only one issue which they proposed to canvas. Learned counsel framed the issue as follows:

> whether there is a concluded agreement for the grant of a 30 year lease to the appellant.

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[5] It is important to note that in the instant case, the first respondent had forwarded to the appellants a draft lease agreement for Lot 261 for a period of 30 years. The draft agreement was as the culmination of various negotiations held between the parties. All the terms essential to formulate a valid and enforceable agreement were contained in the draft lease agreement.

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Subsequently, there was some negotiations which went on to include a non-essential term but the appellants took the liberty to waive the non-essential term for the conclusion of the contract and sent a letter of acceptance of the said lease agreement by letter dated 4 April 2013. The said letter reads as follows:

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> Your ref: EM/RL/C V/2012004136/kas
> Our ref: AIN/C/7892/2012
>
> 4 April 2013
>
> Messrs Mazlan & Associates
> Advocates & Solicitors
> Suite 8.1, Level 8, Work@Clearwater
> Changkat Semantan
> Off Jalan Semantan
> Damansara Heights
> 50490 Kuala Lumpur
>
> Attn: Ms. Rosalind Lim
>
> Dear Sirs,
>
> Draft Lease Agreement between Lembaga Getah Malaysia ("LGM") & Sayfol International School in relation ("Sayfol") in relation to Lot Nos. 857, 858, 859 & 860 known as No. 261, Jalan Ampang, Kuala Lumpur
>
> We refer to the above matter and to your clients letter dated 1.4.2013 addressed to our client and to our clients letter to your clients dated 11.3.2013.

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We regret to note that the dateline stated in our clients letter (1.4.2013) for your client to put in place and finalise the terms of agreement for the alternate proposal for premises No. 260, Jalan Ampang (Lot 75) has lapsed.

In view of the same, our clients take it that your clients have abandoned and/or withdrawn the offer for the alternate lease for premises 260, Jalan Ampang as stated in their letter dated 1.3.2013.

Therefore, both parties as agreed will revert to the original agreement that has been finalised by both our clients and in this regard we refer to the following letters exchanged between our clients and between our firms namely, letters dated 11.1.2011, 12.1.2011, 12.4,2011, 19.4.2011, 30.5.2011, 9.9.2011, 23.11.2011, 25.6.2012, 11.7.2012, 17.7.2012, 10.9.2012, 9.10.2012, 18.12.2012, 29.1.2013 and 29.1.2013.

It is clear from the above that parties have finalised and agreed to ALL the salient terms with the exception to Clause 19 in regard to Compulsory Acquisition.

For all intents and purpose the terms of the lease agreement for Lot Nos. 857, 858, 859 & 860 known as No. 261, Jalan Ampang, Kuala Lumpur has been finalised which is only pending formal execution between by our clients.

For avoidance of doubt since you have failed to revert to our letters dated 18.12.2012 and 29.1.2013, we have been instructed by our client to state that they are agreeable to accept the terms proposed by your client in regards to clause 19. Therefore, kindly incorporate Clause 19 in the lease agreement and forward same for our clients execution immediately.

In view of our clients agreement to clause 19 which is a minor term, it is now confirmed and agreed that parties have now concluded and agreed to all terms and conditions proposed by LGM, therefore kindly forward the fair copies of the lease agreement for our clients execution.

We are instructed to reiterate the your client at all material time have confirmed and asserted their irrevocable intention to grant a long term lease to our client and clients are deeply grateful and appreciative of their said commitment and assurance.

Thank you.

Yours Faithfully,
Sgd

c.c. Sayfol International School/Sayfol International Education Group Berhad.

Attn: Dato' Seri Dr Haji Ghulam Mohd Sayeed/Datin Seri Hajjah Sarah Sayeed Majangah.

[6] In our view, there was misdirection when Her Ladyship failed to appreciate and apply the well settled principles based on a long line of authorities which say that:

(i) the law leans in favour of upholding bargains between the parties and not in striking them down; and

(ii) when it relates to sale and purchase agreement, lease agreement or tenancy agreements, etc, where the terms and conditions relating to essential terms are standard in nature, the court will not permit a party who had subscribed to the term to evade to conclude the agreement for circuitous reasons. The courts often forgive the technical shortcomings to conclude the agreement and this is often called leaning in favour to uphold the bargain. Support for the proposition is found in a number of cases. (See (i) *Sejati Education Sdn Bhd v. S3M Development (Sabah) Sdn Bhd* (S-02-1282-08/2014); (ii) *Pinsia Development Sdn Bhd & Ors v. Hj Abdul Hadi Ahmad & Ors* [2005] 1 CLJ 416; [2005] 2 MLJ 32; (iii) *Hillas & Co Ltd v. Arcos Ltd* [1932] All ER Rep 494; (iv) *Charles Grenier Sdn Bhd v. Lau Wing Hong* [1997] 1 CLJ 625; [1996] 3 MLJ 327; (v) *Rojasara Ramjibhai Dahyabhai v. Jani Narottamdas Lallubhai* [1986] 3 SCC 300).

[7] We do not wish to set out the mundane cases and principles save to say in the recent decision on *Deutsche Bank (Malaysia) Bhd v. MBf Holdings Bhd & Anor* [2015] 8 CLJ 1068; [2015] 6 MLJ 310 the Federal Court has substantially dealt with some of the relevant principles in this one point of law, limited to the facts of that case.

Brief Facts

[8] The first defendant is the registered proprietor of Lots 261 and 260. Lot 261 had been leased to the first plaintiff. Before the termination of the lease, the first plaintiff gave a proposal to purchase the said Lot 261. The first defendant turned it down and after various negotiations between the parties, it was the first defendant who offered to lease the said Lot 261 to the first appellant for a period of 30 years, as per the lease agreement and faxed to the first plaintiff on or about 4 April 2012 even setting out the date when the lease was to commence. The commencement date for the lease was 1 January 2013.

[9] We have perused the draft lease agreement and we are satisfied that all the essential terms which are required to conclude an enforceable agreement has been dealt with by the parties. Subsequent to the sending of the proposed draft lease agreement, there was an exchange of correspondence between the parties to deal with an issue relating to acquisition of the property by State Authorities and the manner in which compensation was to be agreed. This, as far as the lease agreement is concerned, is a non-essential term but learned counsel says it is a counter offer and in consequence it destroys the offer given by the first defendant *in toto*.

[10] In addition, learned counsel says, during the said period the first defendant had offered the lease to Lot 260 to the first plaintiff and there were some negotiations in respect of Lot 260 between the parties. However, at no

point of time had the first defendant withdrawn the offer for Lot 261, (i) or had informed the first appellant/plaintiff that the approval of the first respondent was necessary; (ii) the approval of the Ministry of Finance was necessary; (iii) the first defendant Board had rejected the 30 years lease.

[11] We have, during the course of trial, enquired whether there was any statutory requirement to get the approval of relevant authorities. Both counsel were frank to say that there was none and the first defendant was empowered in law to lease the said Lot 261. As the draft lease agreement had not been revoked, the first defendant by a letter dated 10 September 2012 by the plaintiffs has much significance in relation to *consensus ad idem*. The said letter reads as follows:

10 September 2012

Messrs Mazlan & Associates
Advocates & Solicitors
Suite 8.1, Level 8, Work@Clearwater
Changkat Semantan
Off Jalan Semantan
Damansara Heights
50490 Kuala Lumpur.

Attn: Ms. Rosalind Lim

Dear Sirs,

Draft Lease Agreement between Lembaga Getah Malaysia ("LGM") & Sayfol International School ("Sayfol")

We refer to your email of 17.7.2012.

Our clients have taken note of all the comments forwarded by your clients in the draft agreement and agreeable with the same.

In regards to item No. 1, Kindly note that our clients will enter the lease *via* Sayfol International Education Group Berhad, a company incorporated under the Company's Act 1965. Enclosed herewith the Form 8 together with Form 49 for your perusal.

Kindly revert to us on the. issue of compulsory acquisition. Apart from the above, our clients are agreeable with the terms and conditions stated in the revised draft lease agreement.

Kindly revert with your clients instruction on item 8 (Clause 19) compulsory acquisition.

Thank you.

Yours faithfully,
Sgd.

c.c. - Sayfol Intemational School

Attn: Dato Seri Dr Haji Ghulam Mohd Sayeed/Datin Sen Hajjah Sarah Sayeed Majangah.

[12] In our view, learned counsel for the first defendant's argument that the negotiation in respect of the acquisition, and leasing of Lot 260 as well as the entering of the tenancy agreement for a period of one year between the first plaintiff and the first defendant to allow them to stay in Lot 261 after the expiry of the current lease, cumulatively tantamount to a counter offer which has revoked the offer to lease Lot 261, is too simplistic in nature.

[13] The draft lease agreement was not an offer *simpliciter* which can be revoked by a counter offer based on well-established cases. In the instant case, the parties have moved far away from the 'offer' *simpliciter* and have negotiated the terms of the agreement. It has gone to an advanced stage by clear intention to do so by informing the first plaintiff and setting out the grounds where applicable to give time frame to accept or reject the proposed lease agreement. The lease agreement here stands in the nature of an open contract.

[14] Learned author of *The Modern Law of Real Property*, Dr Geoffrey Cheshire in the 10th edn of his work, described an open contract as follows:

> If a contract for sale specifies merely the names of the parties, a description of the property and a statement of the price, it is called an open contract. When this form of contract is made, the parties are bound by certain obligations implied by the law.

[15] In the instant case, the learned trial judge had set out the facts in great detail but in our view, has not applied the law to the facts and did not undertake a balancing exercise to lean in favour of the first appellant to uphold the bargain. The judgment of the learned trial judge read as follows:

> Based on the grounds above I find that the Defendants clearly never agreed and did not accept the Plaintiffs' proposal to lease Lot 261 for a period of 30 years.
>
> The 1st Defendant's Board of Directors and also the Ministry of Finance did not approve the Plaintiffs' proposal to lease Lot 261 for a 30-year term.
>
> The exchange of draft terms for the Lease Agreement between the Plaintiffs' and the Defendants' solicitors are clearly subject to comments and amendments by the Defendants and the fundamental terms were never agreed by the Defendants.
>
> The Plaintiffs act in respect of the 30-year lease are pursuant to the Plaintiffs' own proposal, and the majority of such acts are unilaterally performed by the Plaintiffs as part of their preparation to enter into the Lease Agreement despite the same still being in the process of negotiation.
>
> The Defendants never agreed to a 30-year lease, despite the existence of discussions, negotiations and meetings between the Plaintiffs and the Defendant but the material and fundamental condition of the lease in respect of the 30-year term was never at any time agreed by the Defendants. There was no consensus between both parties in respect of this 30-year lease.

The Defendants also made a counter offer for Lot 260 to the Plaintiffs *in lieu* of Lot 261 during the meeting on 18.2.2013 and this counter offer was not agreed by the Plaintiffs. The Plaintiffs rejected the counter offer from the Defendants and this marked the end of the legal relationship between them - see the *Mahabuilders* case (*supra*).

Based on all of the grounds hereinabove, I find that there was no 30-year Lease Agreement agreed and finalised between the Plaintiffs and the Defendants. Therefore, there is no contract between the Plaintiffs and the Defendants for the Lease Agreement for the 30-year lease term.

On the other hand, in respect of the Defendants' Counterclaim against the Plaintiffs, I find that the Tenancy Agreement was renewed for one more year commencing on 1.12.2013.

In the circumstances, I find that the Plaintiffs failed to prove their claim against Defendants and the Defendants have also failed to prove their Counterclaim against the Plaintiffs.

The Defendants' Counterclaim against the Plaintiffs is also dismissed by the Court. Both claims are dismissed without costs.

[16] We have read the memorandum of appeal, the record of appeal and the able submission of counsel. After giving much consideration to the submission of learned counsel for the first defendant, we take the view that the appeal must be allowed and specific performance of the lease agreement as prayed must be allowed. Our reasons, *inter alia*, are as follows:

(i) having considered the chronology of events and the contemporaneous documentary and oral evidence, there was in law and fact a valid and enforceable lease agreement for Lot 261 and the contract *prima facie* was concluded by the first defendant in the letter dated 10 September 2012 which we have set out earlier;

(ii) on the facts of the case, this is not a simple case of offer and acceptance as submitted by learned counsel for the first respondent. It has moved to an advanced stage fit for execution. The parties had reached *consensus ad idem* well before 4 April 2013;

(iii) in view of the existence of a valid and enforceable lease agreement and the acceptance thereof, the unilateral act of the first respondent seeking to withdraw from the lease agreement amounts to a breach of its obligations; and

(iv) it is a fit and proper case to order specific performance of the lease agreement and for this purpose grant prayers (a) and (c) of para. 48 of the statement of claim.

[17] For the reasons stated above, we allow the appeal with costs of RM15,000. Deposit to be refunded.

[18] We have taken note that the first defendant has instruction to appeal on this decision to the Federal Court, and have requested a stay of this judgment pending leave to appeal on the undertaking that they will maintain the *status quo* of the parties. The first appellant has no objection to the stay based on the first defendant's undertaking. In consequence, a stay of this judgment is granted pending leave to appeal to the Federal Court.

[19] We hereby ordered so.